

1 would be happy to affix numbers to these at
2 some point if that would --

3 JUDGE SIPPEL: Yes, we're going to
4 have to do that. But let's not do it right
5 now. Go ahead. Find yourself a paragraph.
6 Yes, we have to do that.

7 BY MR. CARROLL:

8 Q All right. Do you have it in
9 front of you?

10 A Yes, sir.

11 Q We'll work backwards. The last
12 page of your written statement, paragraph 33.

13 A Yes.

14 Q It talks about advertising
15 spending reductions for subscribers and you
16 have various numbers for various advertisers.
17 Do you see that?

18 A Yes, sir.

19 Q Did you get all that information
20 from Mr. Furman?

21 A From Mr. Furman or his staff.

22 Q Now Mr. Furman is a witness in

1 this case separately and I'm short cutting
2 this for you because we can cross examine Mr.
3 Furman. Your information is coming from Mr.
4 Furman and his staff and you're repeating it
5 here in your testimony, correct?

6 A That is correct.

7 Q Okay. In paragraph 31, you have
8 references here to the loss of subscribers
9 from Pac-10/Big 12 College Conference. Is
10 this information coming from you personally or
11 is this phased on discussions with Mr. Furman
12 and/or others?

13 A The loss of subscribers not from
14 those but effecting the NFL Network's effort
15 to obtain Pac-10/Big 12 college football
16 packages just to clarify your question, that's
17 personal knowledge.

18 Q Okay. The minimum penetration
19 requirement of 50 million households, do you
20 see that?

21 A Yes, sir.

22 Q Is that based on personal

1 knowledge or what others have told you?

2 A It is based on participating --
3 what others have told me when I was a member
4 of the team analyzes the deal.

5 Q Okay. And which others told you
6 that piece?

7 A Howard Katz and/or Charles Coplin.

8 Q Okay.

9 A And this is my recollection. I
10 don't remember whether it was 50 or 60, but I
11 think it was 50.

12 Q Do you know a Ms. Williams, Kim
13 Williams?

14 A Yes.

15 Q Did you used to work with her?

16 A Yes.

17 Q What was her position?

18 A COO of the -- Chief Operating
19 Officer of the NFL Network.

20 Q Now do you know whether in
21 connection with litigation with Echo Star Ms.
22 Williams has made the allegation that it's

1 because of something that happened with Echo
2 Star that the NFL Network missed its 50
3 million threshold?

4 A I have no knowledge one way or
5 another.

6 Q You have no knowledge of that.
7 Would you -- Even if you'd gotten D2
8 distribution, if Comcast hadn't tiered you,
9 and they were still giving you D2 distribution
10 today are you with me?

11 A Yes, sir.

12 Q Okay. You wouldn't have filed
13 this. You the NFL wouldn't have brought this
14 FCC action, would you?

15 A I can't speak for what the NFL
16 would have done. Certainly if I were the
17 decision maker at the NFL I probably wouldn't
18 have filed.

19 Q Okay. And if Comcast were still
20 carrying you at D2 would you have reached the
21 50 or 60 million subscriber level?

22 A Through Comcast subscribers alone,

1 no. Through additional subscribers that I
2 believe we would have gotten in the fall of
3 '06, yes.

4 Q But through Comcast subscribers
5 alone, the answer is no.

6 A Correct.

7 Q Okay. Let me just quickly see if
8 there are any other paragraphs. Paragraph 15
9 of your statement if you would please.

10 A Yes, sir.

11 Q You see in paragraph 15 you're
12 using rating information up through December
13 31, 2008. Do you see that?

14 A Yes, sir.

15 Q Now you had already left the NFL
16 by that point.

17 A Correct.

18 Q So is this part of your consulting
19 work that you put this information together?

20 A I didn't put this information
21 together.

22 Q Where did you get this

1 information?

2 A It was put together by the NFL in
3 connection with updating my declaration.

4 Q So they gave it to you and you put
5 it in your affidavit?

6 A I reviewed it.

7 Q And signed up to it?

8 A Yes.

9 Q With no personal knowledge of it?

10 A Personal knowledge that (a) it was
11 generated from Nielsen data and (b) it said
12 what it said.

13 Q Did you charge for this work?

14 A I don't believe so.

15 Q Well, it was work you did in
16 putting together your sworn statement,
17 reviewing information that the NFL provided
18 you. Are you sure you didn't send a bill to
19 them?

20 A I'm sure that I haven't sent a
21 bill for anything I did in April.

22 Q A bill that was what?

1 A For anything that I did in April.

2 This is April testimony.

3 Q I see. You haven't billed yet
4 your time for the month of April.

5 A Yes.

6 Q I see. And who at the NFL
7 provided you -- Was it the lawyers who
8 provided you this information or somebody
9 else?

10 A It was provided by Jorge de La
11 Rosa who is the rating guru at the NFL and I
12 don't remember the exact path through which it
13 got to me.

14 Q Okay. And paragraph 14, the one
15 immediately preceding it.

16 A Yes.

17 Q Is that the same thing because I
18 noted you return to information there from
19 December of '08 as well. Is that just the NFL
20 providing you through that gentleman the
21 information you are including in here?

22 A Yes, updated information.

1 Correct.

2 Q Okay. In paragraph 13 of your
3 statement, you refer to competition between
4 the networks. Do you see that?

5 A Paragraph?

6 Q Thirteen.

7 A The heading above paragraph 13.
8 Yes, sir.

9 Q Yes. It's the section and the
10 paragraph is under that heading.

11 A Yes.

12 Q The second sentence refers to
13 "recent ESPN sports poll data" and it cites
14 Exhibit 177. Is that information that was
15 also given to you since you've left the NFL?

16 A It is information that I reviewed
17 in terms of signing onto this declaration,
18 yes.

19 Q Yes. But it's information you
20 reviewed in the same sense. Somebody at the
21 NFL put it together for you, gave it to you
22 and you included it in your declaration.

1 A I don't know when that particular
2 -- let's put it this way. I had regular
3 access to this information when I was at the
4 NFL, the poll data. I don't know whether that
5 poll data was generated before or after June
6 30 of last year. So I might have looked at it
7 at the NFL. I clearly looked at it here in
8 connection with signing the declaration.

9 Q All right. Let me see if there
10 are any others. That may finish those
11 paragraphs for now. Okay. I think you can
12 put your statement to the side.

13 A Okay.

14 MR. CARROLL: Your Honor, I'm
15 about at a point where I would go into some
16 last stretch of exhibits. I would rather not
17 break, use them for two minutes before our
18 lunch break. So what would be the best way to
19 do this? Do you want to break now and we can
20 come back five minutes earlier than we were
21 planning or?

22 JUDGE SIPPEL: I'm sorry. I

1 didn't quite follow all that. You said?

2 MR. CARROLL: I'm about to change
3 topics but use some new exhibits.

4 JUDGE SIPPEL: Yes.

5 MR. CARROLL: It will take more
6 than two or three minutes to do that. I think
7 you had indicated you wanted to go to about
8 12:00 noon before we broke for lunch.

9 JUDGE SIPPEL: Yes. Do you want
10 to get the documents identified before we
11 break?

12 MR. CARROLL: I actually don't
13 want to do that until I have the witness back
14 on the stand.

15 JUDGE SIPPEL: Well, then let's
16 terminate. Let's stop for lunch right now.

17 MR. CARROLL: That would be my
18 suggestion.

19 JUDGE SIPPEL: You don't have any
20 problem with that, sir?

21 MR. LEVY: Of course not.

22 JUDGE SIPPEL: So why don't we

1 come back -- it's 12:00 noon. Why don't we
2 come back -- Is 1:30 p.m., is that too much
3 time?

4 MR. CARROLL: It's good.

5 JUDGE SIPPEL: I don't think -- I
6 mean I think we seem to be making progress and
7 I don't want to -- I know you have to go. You
8 can't just -- You don't bring your lunch with
9 you. I'm sure you go out for lunch and stuff.

10 MR. CARROLL: Yes, that would help
11 because we have to go somewhere else for
12 lunch.

13 JUDGE SIPPEL: Let's do it at 1:30
14 p.m. we'll be back here.

15 MR. CARROLL: Thank you, Your
16 Honor.

17 JUDGE SIPPEL: All right. You're
18 still under oath, sir.

19 THE WITNESS: Yes, sir.

20 JUDGE SIPPEL: So you can't
21 discuss your testimony with any other
22 witnesses.

1 THE WITNESS: Okay.

2 JUDGE SIPPEL: We're recessed.

3 Thank you. Until 1:30 p.m. Off the record.

4 (Whereupon, at 12:30 p.m., the
5 above-entitled matter recessed to reconvene at
6 1:36 p.m. the same day.)

7 JUDGE SIPPEL: Are there any
8 preliminaries, or are we set to go?

9 MR. SCHMIDT: Yes, Your Honor. In
10 the interest of time, when we examine Dr.
11 Singer, we intend to use three poster boards.
12 We're also going to have handouts. I see Mr.
13 Carroll has some poster boards, as well. May
14 we bring in an easel to mount them on?

15 JUDGE SIPPEL: Yes. I don't see
16 why not.

17 MR. SCHMIDT: Okay. We were just
18 -- if it's okay with opposing counsel, we were
19 just going to set them up over there. That
20 way Your Honor can see them, and the witness
21 can see them.

22 JUDGE SIPPEL: That's important.

1 MR. SCHMIDT: Okay. Thank you.

2 JUDGE SIPPEL: Yes, you can use -

3 MR. CARROLL: Well, I don't know.

4 I want to see the -- no, I'm kidding. That's
5 fine.

6 JUDGE SIPPEL: I don't know, Mr.
7 Carroll. This New York practice is a tough
8 one. We're not used to that here.

9 MR. CARROLL: I practiced here for
10 10 years.

11 JUDGE SIPPEL: Okay. I take it
12 back.

13 MR. CARROLL: I learned how to
14 practice down here.

15 JUDGE SIPPEL: Oh. Okay.

16 MR. LEVY: Your Honor, in terms of
17 preliminaries, you had suggested that we mark
18 Mr. Hawkins' direct testimony.

19 JUDGE SIPPEL: Yes, for the
20 record.

21 MR. LEVY: For the record, with
22 the Court's permission, I would mark Mr.

1 Hawkins' written testimony as 186, which I
2 believe is the next number in sequence. We
3 also have his Declaration that was submitted
4 with the complaint, which I'd ask to be marked
5 as 187. And the supplemental declaration to
6 be marked as 188.

7 JUDGE SIPPEL: Any objection to
8 that?

9 MR. CARROLL: No objection.

10 JUDGE SIPPEL: Okay. Those
11 documents are so marked. It's 186, 87, and
12 88, as identified.

13 (WHEREUPON, THE DOCUMENTS REFERRED
14 TO WERE MARKED AS ENTERPRISES
15 EXHIBIT NOS. 186-188 FOR
16 IDENTIFICATION.)

17 JUDGE SIPPEL: And do you want to
18 move them into evidence at this time?

19 MR. LEVY: Yes, Judge. May they
20 be received in evidence?

21 JUDGE SIPPEL: They are received
22 in evidence, as you've indicated.

1 (WHEREUPON, THE DOCUMENTS REFERRED
2 TO, PREVIOUSLY MARKED ENTERPRISES
3 EXHIBIT NOS. 186-188 FOR
4 IDENTIFICATION, WERE RECEIVED IN
5 EVIDENCE.)

6 MR. LEVY: Thank you.

7 JUDGE SIPPEL: Thank you, sir.

8 Okay.

9 MR. CARROLL: Thank you, Your
10 Honor.

11 Mr. Hawkins, good afternoon.

12 JUDGE SIPPEL: I'm sorry. Mr.
13 Hawkins, you're still under oath, sir. You
14 understand that.

15 THE WITNESS: Yes, sir.

16 BY MR. CARROLL:

17 Q Owners meeting, do the owners of
18 the NFL have periodic yearly meetings to
19 discuss things?

20 A More frequently than yearly.

21 Q How frequently would that be?

22 A There's an annual meeting in

1 March. That's the biggest of the Owners'
2 meetings. There's a May meeting, and there's
3 typically an October or November meeting.

4 Q Okay. And the Owners have
5 organized themselves into various committees.
6 Is that right?

7 A The Owners -- there are
8 committees, in addition to the full
9 membership, yes.

10 Q And one of those committees being
11 the Broadcast Committee, for example?

12 A Yes, sir.

13 Q What's the Broadcast Committee?

14 A It is the Committee that sets
15 media policy for the league, or advises the
16 Commissioner on setting media policy for the
17 league.

18 Q And when you were working at the
19 NFL, what role did you play with respect to
20 the Broadcast Committee?

21 A I participated in meetings.
22 Sometimes silently, and sometimes actively,

1 depending on the subject matter.

2 Q Did you also help put together
3 what are called slide decks that were used to
4 brief the Owners?

5 A On occasion, yes.

6 Q Okay. And by "slide decks", are
7 those PowerPoint presentations that the NFL
8 would use to brief the Owners on issues of
9 interest?

10 A Yes.

11 Q Good. Did you also attend the
12 annual Owners meetings from time to time?

13 A Yes, I did.

14 Q Okay. In what capacity would you
15 attend those meetings, as a lawyer, as a
16 businessman, as something else?

17 A As a league staff member.

18 Q League staff member.

19 MR. CARROLL: Okay. Let me show
20 you what we've marked for identification, Your
21 Honor, as Comcast Exhibit 302. For the
22 record, it is an email from a Deborah

1 Pugliasi, dated March 14, 2006 to various
2 people at the NFL, with a slide deck attached.
3 May I approach and distribute copies?

4 JUDGE SIPPEL: You may.

5 MR. CARROLL: Thank you, Your
6 Honor.

7 JUDGE SIPPEL: Thank you. This is
8 a document marked as Comcast Exhibit 302,
9 multi-page document. Do you know how many
10 pages this is?

11 MR. LEVY: Let me read in Bates
12 numbers for the record, Your Honor; NFL-
13 E0931518 through 1557. I'm using the numbers
14 on the bottom right corner.

15 JUDGE SIPPEL: I have it. Thank
16 you. That's marked for identification as
17 Comcast Exhibit 302.

18 MR. CARROLL: Thank you, Your
19 Honor.

20 BY MR. CARROLL:

21 Q First question to you, I guess,
22 for you, Mr. Hawkins, do you recognize this as

1 a slide deck that was put together in
2 connection with one of those Owners meetings?

3 A It's a slide deck that was put
4 together at roughly the same time as the
5 annual meeting. I don't know whether it was
6 for presentation to the Owners, as a whole, to
7 a committee, or to a small group.

8 Q Okay. But you can identify it as
9 one put together in connection with a meeting?

10 A Contemporaneously with a meeting.

11 Q Okay. And were you involved in
12 connection with putting together some of the
13 materials?

14 A Without looking through the entire
15 deck, I'd have to say I don't know.

16 Q Okay. But it would have been your
17 practice to have been associated with some of
18 the pages, for example, having to do with NFL
19 Network? Would that have been in your area?

20 A It would -- I would typically
21 provide input into some aspects of such a
22 deck, yes.

1 MR. CARROLL: Okay. Offer this
2 into evidence, Your Honor.

3 JUDGE SIPPEL: Any objection?

4 MR. LEVY: No, sir.

5 JUDGE SIPPEL: Received in
6 evidence as Comcast 302.

7 (WHEREUPON, THE DOCUMENT REFERRED
8 TO, PREVIOUSLY MARKED COMCAST
9 EXHIBIT 302 FOR IDENTIFICATION,
10 WAS RECEIVED IN EVIDENCE.)

11 BY MR. CARROLL:

12 Q Now, Mr. Hawkins, let me first
13 start with a page, and I'm going to use the
14 Bates numbers, if you'll follow with me in the
15 bottom right corner, Your Honor, as well.

16 JUDGE SIPPEL: You could just use
17 the last three digits, I guess.

18 MR. CARROLL: Perfect. I'm going
19 to start with page 530.

20 THE WITNESS: Okay.

21 MR. CARROLL: That should be a
22 slide, when you turn it sideways has at the

1 top "Subscriber Fees."

2 THE WITNESS: Okay.

3 MR. CARROLL: Are you there?

4 THE WITNESS: Yes.

5 BY MR. CARROLL:

6 Q And this is -- were you here for
7 opening arguments?

8 A Yes.

9 Q Okay. So, then you heard me refer
10 to a chart that set forth the planned
11 subscriber fees to be charged by the NFL
12 Network. Do you remember that in the opening
13 argument?

14 A Yes.

15 Q Okay. And do you see this is a
16 chart that does precisely that?

17 A Yes.

18 Q Did you help put this particular
19 chart together?

20 A Not to the best of my
21 recollection.

22 Q Okay. But it was in the materials

1 when you reviewed it. You didn't have any
2 objection to this chart, did you?

3 A You're assuming that I reviewed
4 it.

5 Q Okay. Does this chart accurately
6 set forth the strategic plan for the pricing
7 of NFL Network?

8 A I wouldn't say it sets forth a
9 strategic plan. It sets forth a goal, I
10 believe.

11 Q Okay. And the goal is - let's
12 read this together. On the far left column-

13 MR. CARROLL: And, Your Honor, we
14 actually have this on a board, as well. This
15 is the board I referred to earlier, which we
16 can -- but if people have copies, we can just
17 work off the copies.

18 JUDGE SIPPEL: Copies are fine.

19 MR. CARROLL: Okay.

20 BY MR. CARROLL:

21 Q In the far left column, there's a
22 heading, [REDACTED] And there are

1 some entities listed there. Do you see that?

2 A Yes, sir.

3 Q And we have ESPN, Fox, Disney,
4 TNT, and then we've got an arrow pointing to
5 NFL Network coming from the other column. Do
6 you see that?

7 A Yes.

8 Q The first four entities listed
9 there under [REDACTED] those are the sort
10 of most expensive per subscriber fee based
11 channels around the time this was done,
12 weren't they?

13 A Those are among the most
14 expensive, yes.

15 Q Okay. And the middle category is
16 the [REDACTED] per
17 subscriber category. Right?

18 A Yes, sir.

19 Q And in that one we see NFL
20 Network, with a circle around it, and an arrow
21 pointing to the [REDACTED] column. Agreed?

22 A Yes.

1 Q And that indicates that at the
2 time this was done, this is 2006, NFL Network
3 was then in that middle category, [REDACTED]
4 [REDACTED] Right?

5 A Yes, sir.

6 Q But its goal, as diagramed here,
7 was to move over to that more expensive
8 category of [REDACTED] Correct?

9 A I believe that would be what's
10 indicated, yes.

11 Q Okay. And over on the right side
12 we have a category with lots of other channels
13 that are listed as less than [REDACTED]

14 A Yes, sir.

15 Q Correct?

16 A Yes.

17 Q And all sorts of things there,
18 Cartoon Network, Hallmark, AMC. Can you tell
19 us, where is OLN on this chart?

20 A I do not see the logo on here.

21 Q You don't see them?

22 A No, I don't.

1 Q How about Golf, do you see them
2 anywhere?

3 A Don't see it, no. Some of the
4 black and white stuff didn't copy all that
5 well.

6 Q Do you see that in the far right
7 column under the [REDACTED] do you see ESPN
8 Classic?

9 A Yes.

10 Q Under that there is Classic 1?

11 A VH1 Classic, I think, yes.

12 Q Do you see under that there's a G?

13 A Is that the Golf channel?

14 Q I'm asking you. Do you recognize
15 their logo?

16 A I don't.

17 Q Okay.

18 MR. CARROLL: I can't testify. It
19 may seem that way. I can only ask questions.

20 THE WITNESS: Yes.

21 MR. CARROLL: So, I'm just going
22 to ask you.

1 BY MR. CARROLL:

2 Q If you go to the right of G in the
3 middle, do you see there's a leaf with an N at
4 the end, that says Adventure TV?

5 A Yes.

6 Q Do you know if that's OLN?

7 A I do not know one way or another.

8 Q Do you remember if when you --
9 this was prepared for the Owners, NFL Network
10 was already positioned in a column that was
11 more expensive than OLN and Golf, and its goal
12 was to become even more expensive?

13 A Restate the question, if you
14 would, sir.

15 Q Do you know at the time this was
16 prepared, whether OLN and Golf were already
17 less expensive than the category that NFL
18 Network is listed in?

19 A I don't believe that they were at
20 the time.

21 Q But, you don't remember for sure.

22 A I don't believe that they were,